IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 988 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

STATE OF GUJARAT

Versus

PARSHOTTAM SHAMJIBHAI BHILL

Appearance:
1. Criminal Appeal No. 988 of 1992
MR BY MANKAD APP for Petitioner No. 1
MRS SHILPA J UNWALLA for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE H.H.MEHTA

Date of decision: 18/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

#. The present appeal is filed by the State challenging the judgement and order of acquittal recorded by learned Additional Sessions Judge, Rajkot dated 1.8.1992 acquitting the accused under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") as well as for the offence punishable under Section 66 (B) of the Bombay Prohibition Act.

#. Mr. Mankad, learned APP has while arguing the matter taken us through the paper book consisting of oral and documentary evidence and the judgement under challenge and it is his contention that the learned Trial Judge was not right in acquitting the accused and prayed for quashing and setting aside the order of acquittal.

#. Mrs. Shilpa J. Unwala, learned advocate for the respondent accused has supported the judgement and order of acquittal. She has contended that the learned Trial Judge has appreciated the evidence led by the prosecution and considering the defence of the accused, has recording the finding of acquittal and therefore, this is not a matter, where this Court is required to interfere by setting aside the order of acquittal into conviction and she prayed for dismissal of the appeal.

#. To appreciate the contention and as found from the record, it is the prosecution case that on 12th February, 1987 early in the morning at about 5.30 A.M., the complainant Shri P.D. Joshi was on patrolling near Press Colony Gate, Jamnagar Road, Rajkot, the respondent accused was found in suspicious condition and the accused tried to step down from the road and accused was apprehended by the police and during the personal search of the accused from left side pocket of the pent, the complainant Shri Joshi has found that the accused was having 70 Grams of Charas without any pass or permit and the value of the Charas was estimated at Rs.700=00 and accordingly, the accused was arrested and chargesheet was filed under the provisions of the NDPS Act as well as under the Bombay Prohibition Act.

#. To prove the case against the accused, the prosecution has examined two panchas namely Mr. Kishorbhai Bhagwanbhai - PW 1 and Shri Arvindbhai Amarshibhai PW-2 and both the panchas have not supported the case of the prosecution. As found from the evidence that the panchnama was drawn at the police station. Both the panchas have not supported the prosecution case and request made by learned APP to permit him to cross-examine both the panchas was granted and in

cross-examination, both the panchas have also not supported the case of the prosecution that the panchnama was drawn as found from the panchnama. Both the panchas have denied upon smelling the same, the same was smelled like charas and out of which, 5 grams of charas was taken out by way of sample as well as the said samples were seized and seals were applied. It is further found from the evidence that PW-2 Arvindbhai, who has in cross examination in term not supported the case of the prosecution and he has denied that no substance like charas was seized from the respondent.

#. PW-3 Prafulbhai Devshankar Joshi has deposed at Ex.10. He has deposed that he was working as Police Constable and he was attached to Rajkot District Police Station. He has deposed that on 12th September, 1987, his duty was at the Pradumannagar Police Station, Jubilee Baug Police Chowki between 11.9.1989 to 12.9.1987. He has deposed that his duty was scheduled at Pradumannagar Police Station at Jubilee Bit at 8-00 a.m. on 12.9.1987. Alongwith him, Dhirubha Juthubha was also in the police station and was also on patrolling. When they reached at the Press Colony, at that time, one suspected person was found. Upon asking the name of that person, he told that his name is Parshottam Shamjibhai Bhill. The witness no. 3 has also identified the accused in Court. When he saw the pocket of that person, he found charas in his pocket and accused has no pass or permit for the same. Accordingly, they have produced the accused in Pradumannagar Police Station and Head Constable Vishnubhai had made panchnama in presence of panchas. He has filed complaint Ex.11 against accused as well as he has produced the accused in the Court. In the cross-examination, it is found that he has admitted that the area namely Press Colony is a residential area and in that area, there is a movement of people. He has denied that he was not on duty between 11/12.9.1987. He has further denied that he has not arrested the accused and he also denied that no panchnama was tendered in his presence.

#. Shri Vishnubhai PW-4 who attached with the Pradumannagar Police Station as Police Head Constable has deposed before the Court that on 12.9.1987 he was on duty from 00.00 hours to 8.00 hours at Jubilee Bit and he came at Pradumannagar Police Station at 6-30 a.m., where PSO Kanubha was incharge of the Police Station. Mr. Jadeja has handed over the investigation to him and thereafter, he has taken over the charge of the investigation. After recording the complaint from the complainant, he arranged for calling for two panchas at police station and a

panchnama was drawn in the police station. The panchas as well as he himself has signed the panchnama. PW-4 Shri Vishnubhai Sundardas had also identified the accused in the Court. The sample of the muddamal article was handed over to the Chemical Examiner for analyzing the goods. He has also produced the copy of the yadi at Ex.14 signed by him. After the report from the Chemical Examiner was received, the same was included in the investigation papers and after completion of the investigation, charge-sheet was filed against the accused before the learned Chief Judicial Magistrate. In the cross-examination, he has denied that he was engaged in another raid on 12.9.1987. He has also denied that subsequently, he has changed the time in the complaint and subsequently he has prepared the panchnama. It is significant to note that no weight measures are there. No muddamal was weighed and sealed. He also denied that no muddamal article was seized from the accused. He has also denied that false case was filed against the accused.

#. Ex.16 is a report of the Chemical Examiner dated 4.1.1988 and as per the report, packet contained a match box having about 5 gms. of dark brown coloured material and the result of the analysis is as under:-

"The contents of the paper packet was identified as the botanical material of plant cannabis Sativa (charas)."

As per the Chemical Examiner's report, the substance was identified as Charas.

#. Learned Trial Judge while appreciating the evidence has recorded finding that no independent witnesses was led by the prosecution and panch examined by the prosecution have turned hostile and relied upon the decision reported in case of DASHARATH VS. STATE OF UTTAR PRADESH, reported in 1984, Criminal Law Journal, p.757, wherein, it is held that no independent witnesses were examined and prosecution has failed to establish the case against the accused and witnesses have turned hostile, the learned Judge has acquitted the present accused.

##. Mr. Mankad, learned APP while arguing the matter has contended that though the panchas have not supported the prosecution case and have turned hostile, however, as found from the evidence of Shri Prafulbhai - Police Constable, who had identified the accused in the court and as per the panchnama, the accused is having Charas

and as per Chemical Examiner's report, the substance which was examined and recovered from the accused was charas. It is true that as per the report, the substance examined was found to be a charas and witness Prafulbhai was police constable, who had identified the accused during the trial in the Court, however, it is also necessary for us to observe that as found from the evidence that the accused was apprehended by the police and the accused was brought at the police station, the distance between the place where the accused was found and the police station is about two and half kilometers. The prosecution has also not led any evidence that whether any witnesses were called when the search was carried out by the police, at the time when the accused found early in the morning in suspicious condition and further no requirements under the NDPS Act have been followed by the police authorities. Considering the findings recorded by the learned Trial Judge, we are of the view that this is not a matter, where this Court is required to interfere with the order of the acquittal recorded by learned Trial Judge based on appreciation of evidence. Accordingly, there is no substance in the present appeal and the same is dismissed.

##. Accordingly, acquittal appeal filed by the State is dismissed. The order of acquittal passed by Additional Sessions Judge, Rajkot dated 01.08.1992 in Sessions Case No. 12 of 1989 acquitting the accused for the offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and for the offence under Section 66 (B) of the Bombay Prohibition Act is hereby confirmed. Bail bond furnished by respondent-accused is accordingly cancelled.

(D.K.Trivedi,J.)

(H.H.Mehta, J.)
pallav